

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT WHEELER,

Plaintiff,

vs.

CAPITAL ONE BANK (USA), N.A.,  
CAPITAL ONE SERVICES, LLC, ROBERT  
L. BAROSKA and NUDELMAN, KLEMM  
AND GOLUB, P.C.,

Defendants.

Civil Action No. 12-5848-MSG

**MOTION TO DISMISS PLAINTIFF'S COMPLAINT BY DEFENDANTS  
CAPITAL ONE BANK (USA), N.A. AND CAPITAL ONE SERVICES, LLC**

Defendants Capital One Bank (USA), N.A. and Capital One Services, LLC move this Court to dismiss Plaintiff's Complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for the reasons set forth in the accompanying memorandum of law, which is incorporated by reference herein.

Respectfully submitted,

Dated: December 13, 2012

/s/ Kevin Batik  
Kevin S. Batik  
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Attorney for Defendants Capital One Bank  
(USA), N.A. and Capital One Services, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following counsel of record via notice delivered by the Court's ECF System on this 13th day of December 2012:

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/s/ Kevin Batik